



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

Possible Item for Other Business
Ethics Commission Meeting
November 19, 2009

To: Commissioners

From: Jonathan Wayne, Executive Director

Date: November 18, 2009

Re: For Your Information – Request for Staff Advice from Lynne Williams
Campaign

Two days ago, the Commission staff received a request from David Bright, the campaign manager for the 2010 gubernatorial campaign of Lynne Williams. Ms. Williams is attempting to qualify for Maine Clean Election Act (MCEA) funding. The campaign proposes to invite “the state and regional Green Parties, along with other progressive organizations and individuals” to raise some of the seed money and qualifying contributions that are necessary for Ms. Williams to qualify for MCEA funding. The individual collectors would be compensated based on the amount of contributions collected, rather than as a flat fee. In some cases, the compensation would be as high as 50% of the amounts raised by the collectors. Mr. Bright recognizes that there needs to be a high degree of transparency and accountability in this fundraising.

Because the proposal could significantly increase the use of paid political consultants for purposes of qualifying for MCEA funding, I wanted to let you know of the proposal under the heading of Other Business at the November 19 meeting, and the staff’s intended response. David Bright will be present at the meeting in case you would like to discuss this matter and have questions for the Williams campaign.

If you have any other concerns, please let me know.

MCEA Eligibility Requirements for Gubernatorial Candidates

In order to qualify for MCEA funding, a 2010 gubernatorial campaign must:

- collect 3,250 qualifying contributions of \$5 from registered Maine voters made payable to the Maine Clean Election Fund (this requirement increased by 30% from the 2006 requirement to collect 2,500 qualifying contributions);
- raise \$40,000 in seed money contributions (of up to \$100 per donor) from registered Maine voters (this is a new requirement adopted in 2009); and
- qualify for the ballot by collecting petition signatures.

Past Payments to Political Consultants for Collection of Qualifying Contributions

In 2006, six gubernatorial campaigns made serious attempts to qualify for MCEA funding. (Two of these campaigns did not qualify.) In order to meet the qualification requirements, most of the campaigns relied on a great deal of volunteer effort, a few paid staff members who were compensated with seed money raised by the campaign, and payments of relatively small amounts of seed money to outside political consultants. The amounts to outside consultants included:

- Candidate Pat LaMarche paid \$3,500 in seed money to Initiatives Consulting, Inc., which I believe is owned by activist Jonathan Carter. (After qualifying for public funding, Ms. LaMarche paid more than \$100,000 in Maine Clean Election Act funds to Initiatives Consulting for work performed on her campaign.)
- Chandler Woodcock paid \$1,000 in seed money to activist Paul Madore for “signatures and checks.”
- John Michael paid \$2,750 to Stavros Mendros and \$2,250 to the Maine Grassroots Coalition (which, I believe, is affiliated with Paul Madore) for “petitioning and fundraising,” and other professional services.

Permissibility of Proposal by Williams Campaign

The staff believes that the legislative intent of requiring gubernatorial candidates to collect seed money and qualifying contributions was for candidates to demonstrate a high degree of support from registered Maine voters to qualify for public funding. The Commission staff does have some concern that if gubernatorial candidates pay large amounts of seed money (which can be raised nationally) to meet these requirements, the practice may depart from the concept of demonstrating support from voters within Maine.

Nevertheless, at first glance, the staff cannot see any provisions in the Maine Clean Election Act (21-A M.R.S.A. §§ 1121-1128) or the Commission Rules which would forbid the Williams campaign from paying compensation to fundraisers in the manner proposed. We do believe the Williams campaign should take steps to ensure that the individuals collecting the money adhere to the highest standards of compliance, because the individuals would be outside of the direct control of the campaign.

Background Issue of Fraud in 2006 and 2008 Campaigns

Any gubernatorial candidate who qualifies for MCEA funding in a general election stands to receive more than \$1 million for the general election alone. Because of the very large amount of public funds paid to these candidates, the Commission staff believes it has a duty to actively verify that candidates have qualified for this funding correctly. Unfortunately, there have been some instances of fraud by candidates attempting to qualify for MCEA funding.

In 2006, the Commission staff randomly telephoned some of the individuals who purportedly gave \$5 qualifying contributions to the gubernatorial campaigns in order to verify that the campaigns received these contributions legitimately. The staff did find problems with the campaign of one gubernatorial candidate, John Michael. We interviewed 218 individuals. Eighteen of them (8.3%) responded that they did not give \$5 qualifying contributions to the Michael campaign, even though the campaign had submitted forms to the Commission claiming the receipt of contributions from them. I personally interviewed some of these 18 individuals for the preparation of affidavits, and they were certain that they did not give \$5 qualifying contributions to the Michael campaign.

On the basis of this apparent fraud and other issues, the Commission staff denied the candidate's application for public funding. Mr. Michael initiated an appeal to the Commission with the assistance of legal counsel, and then withdrew the appeal. So, his 2006 gubernatorial campaign did not receive MCEA funding. During the appeal, Mr. Michael refused to identify the specific individuals who raised qualifying contributions for him.

In addition, two legislative candidates have been criminally prosecuted by the Maine Attorney General for fraud in qualifying for MCEA funding. They falsely stated in forms submitted to the Commission that they received \$5 qualifying contributions from individuals who were deceased or who did not in fact make any contributions.

The Commission staff believes that the overall majority of candidates seeking MCEA funding attempt in good faith to comply with qualifying requirements. Nevertheless, because of the occasional commission of fraud in qualifying, the Commission should adopt procedures that verify that candidates have qualified correctly. When campaigns engage outside consultants who, in turn, hire individuals who are not directly under the control of the campaigns, the Commission staff is concerned that the arrangement may detract from the overall reliability of the qualification process.

Response to the Williams Campaign

I have attached a draft response to the Williams campaign by the Commission staff.

Thank you for your consideration of this matter.

From: David Bright at Lynne Williams Campaign
[mailto:manager@Lynnewilliams2010.org]
Sent: Monday, November 16, 2009 11:50 AM
To: O'Brien, Gavin
Subject: Fund raising question

Gavin,

We are beginning a concentrated program of fund-raising using members of the Green Party and other progressive groups, in order to quickly dispose of the QC and seed money requirements, so Lynne can concentrate on issues. As such we are proposing a commission-based system to use in encouraging contributions. Our theory is that the original intent of seed money was to help fund the QC effort, so we want to expand that concept to the mandatory seed money collection as well. Please review the enclosed document, which outlines the proposal we want to make to the Green Party and others, and let me know if you see any problems with it.

Thanks,

David Bright
207-234-4224

As a Maine Clean Elections candidate, Lynne Williams has pledged not to accept campaign contributions from businesses, groups, associations, political action committees, party committees, labor unions or trade associations. All the money used to fund her campaign will come from individuals and from the Maine Clean Election Fund.

In order to qualify for Clean Election funding, however, the campaign must meet two financial goals. It must raise a minimum of \$40,000 from Maine residents, and it must have 3,250 Maine registered voters make a \$5 qualifying contribution to the Maine clean Election Fund in Lynne's name. Both of the contributions must be from individuals, and must be accompanied by documentation proving the validity of the contributions. Four years ago, there was no requirement that candidates raise private funds, and the qualifying contribution requirement was 2,500, not 3,250. These new requirements for the 2010 campaign were imposed by the Maine legislature to make it harder for gubernatorial candidates to qualify for Clean Election funding.

The Williams Campaign Committee is seeking assistance in raising the seed money and the qualifying contributions required for Lynne to be certified as a Maine Clean Elections candidate for governor. The campaign is offering the state and regional Green Parties, along with other progressive organizations and individuals, an opportunity to assist in these fund-raising tasks. Because we understand that fund-raising is an expensive and time-consuming task, we are offering a commission-based program – with commissions running as high as 50 percent in some instances – to those organizations and individuals that wish to help. The funds to pay for this will come out of the seed money contributions that are raised. This is consistent with the original intent of the Maine Clean Election Act, in that seed money was intended to help candidates collect their qualifying contributions.

Both seed money and qualifying contributions can be collected online if the contributor has a personal credit card. Links to all collections methods may be found on the campaign website at <http://www.lynnewilliams2010.org/contribute>. In addition, these contributions can be paid by personal check or money order, with accompanying documentation.

While some campaigns have used lump-sum or contractual agreements with fund raisers in the past, the Williams campaign will use a commission-based system because it provides better incentive for the fund raiser to exceed goals, and also provides a more transparent reimbursement structure, which makes the payments to the vendor easier to justify during election regulation audits. The Maine Elections Commission has strict transparency requirements, and will be doing an audit of the campaign's finances. A commission-based system will help both the campaign and the Ethics Commission assure that payments to groups and individuals have been properly made.

The Maine Ethics Commission has a web site where people can use a credit card to make their \$5 Qualifying Contribution. New this year is a system where this web site will try to match the contributor with the state-wide voter list maintained by the Secretary of State. If the web site can make a match, we are not required to have a municipal voter registration official verify that the contributor is a registered Maine voter. If the website cannot match the contributor with the voting list, it generates preprinted acknowledgement forms on a town-by-town basis which must be verified by the town registrar. The good news is this simplifies the process greatly. The bad

news is not everyone has a credit card, or wants to use their credit card online, so we still expect there will be some traditional paper-based collecting. To date, however, our qualifying contributions are running about 70 percent web based. Of those, about 75 percent are being automatically verified.

The Williams campaign proposes the following commission schedule for those groups and individuals assisting with the collection of **Qualifying Contributions**.

For Qualifying Contributions you solicit that come in via the Ethics Commission website (Just report to us the name and town of the contributor you steered to the site, we can confirm that the person did contribute):

\$2.50 per name for people you steer to the Ethics Page web site and who are automatically verified as a registered Maine voter.,

\$1.50 per name for a website referral that is not automatically verified as a registered voter ONCE WE ARE ABLE TO OBTAIN THE VERIFICATION from the town clerk. We will not pay for a contribution where the contributor cannot be verified as a Maine voter.

For Qualifying Contributions you collect as personal checks or as money orders, we will pay \$2.50 per voter for a completed transaction (proper contribution enclosed, contributor has filled out and signed acknowledgment form, circulator has signed the affirmation and the town clerk has verified the voter.) We will not pay for contributions where all the paperwork is not in order.

As for **Seed Money** contributions, the campaign MAY collect a maximum of \$200,000 (up from a maximum of \$50,000 in 2006) Also new this year is a requirement that in order to qualify for Clean Election funding the campaign MUST collect a minimum of \$40,000 from Maine registered voters.

There are also two ways to collect seed money contributions, either as personal checks made out to Williams Campaign Committee, with the appropriate paperwork attached, including a voter signature; or via a contribution made on the campaign's secure website. If the payment is made by check, we get 100 percent of the contribution, but there is a more involved – and thus more costly – documentation process. If the payment is made via credit card on line, the secure website takes a credit card handling fee out of each contribution, but the paperwork is simplified. We welcome both types of contributions.

The Williams campaign proposes the following commission schedule for those groups and individuals assisting with the collection of **Seed Money Contributions**:

From Maine registered voters with check in hand with properly completed and signed envelope or form: 50 percent commission.

For seed money contributions from Maine registered voters you steer to the website: 40 percent commission (same confirmation as with QC, tell us the name and town)

For Seed money contributions from non-Maine voters either with a properly filled out form or envelope, or who you steer to the website: 30 percent commission.

Groups or individuals working on behalf of the campaign will be required to submit reports, checks and paperwork on a weekly basis.

The campaign will supply contribution envelopes, receipt and acknowledgement forms, and campaign literature to help with solicitations. The Williams campaign will require that a group disclose all those who will be participating in the program, so that in the event someone contacts the campaign to ask if an individual is authorized to be soliciting on the campaign's behalf we can confirm that.

If you are not familiar with the Campaign's secure website for seed money, or with the Ethics Commission site for qualifying contributions, there are links to each of them on our web site contribution page <http://www.LynneWilliams2010.org/contribute>.

Please contact me directly if you have questions, need more information, or wish to participate in this program.

David Bright
Campaign Manager
Williams Campaign Committee
Manager@LynneWilliams2010.org
207-234-4224

November __, 2009

David Bright
Campaign Manager for Lynne Williams for Governor
P.O. Box 3775
Brewer, ME 04412

Dear Mr. Bright:

Thank you for letting the Commission staff know of the proposal of the Lynne Williams campaign to "the state and regional Green Parties, along with other progressive organizations and individuals" that they would raise seed money and qualifying contributions for the Williams campaign, and would be compensated by the campaign based on the amount of contributions collected. This response is on behalf of the staff of the Commission.

Our general concern with the proposal is that if the fundraising is not directly overseen by the campaign and individuals are paid based on amounts they have raised, there may be less accountability in ensuring that the money for the contributions comes from the purported contributors. We have encountered campaigns in the past which have claimed receiving qualifying contributions from some sources, when in fact the money for the contributions came from other sources. The Commission staff would welcome an opportunity to suggest to the campaign some record-keeping and controls that would minimize the risk of noncompliance. *[Alternatively, the letter could suggest specific controls such as: Williams campaign must obtain from the fundraising organizations lists of people conducting the fundraising and what techniques they are using (e.g., e-mail solicitations, letter appeals, face-to-face contact), and record-keeping designed to link specific contributions received to specific fundraisers.]*

Nevertheless, the Commission staff cannot see any provisions in the Maine Clean Election Act (21-A M.R.S.A. §§ 1121-28) or the Commission Rules which would forbid the Williams campaign from paying compensation based on amounts of seed money and qualifying contributions collected.

Sincerely,

Jonathan Wayne
Executive Director